IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-76-931

ROBERT STOPS AND NORMA STOPS,
Petitioners,

v.

LITTLE HORN STATE BANK,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MONTANA

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Robert Stops and Norma Stops petition for a writ of certiorari to review the opinion and judgment of the Supreme Court of the State of Montana.

OPINIONS BELOW

The judgment of the Supreme Court of the State of Montana is reported as *Little Horn State Bank* v. *Robert Stops and Norma Stops*, 555 P.2d 211 (Mont. 1976), and is reproduced as Appendix A. The Order and Memorandum of the District Court of the Thirteenth Judicial District of the State of Montana in and for the County of Big Horn is unreported and is reproduced as Appendix B.

JURISDICTION

The judgment of the Supreme Court of the State of Montana was entered on October 7, 1976. The jurisdiction of this court is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Whether the Montana state courts and the sheriff of Big Horn County have jurisdiction to enforce an order of execution within the exterior boundaries of the Crow Indian Reservation on personal property owned and on wages earned by enrolled members of the Crow Tribe who earn their income and reside within the Reservation, when the judgment was rendered off the Reservation.

TREATIES AND STATUTES INVOLVED

Section 7 of the Act of August 15, 1953, 67 Stat. 588, 590:

> "The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof."

25 U.S.C. § 1322(a) (1970):

> "The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State."

25 U.S.C. § 1326 (1970):

> "State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults."

Resolution 64-2 of the Crow Tribal Council is reproduced as Appendix C.

STATEMENT OF THE CASE

The facts relevant to the question presented by the petition are uncontroverted.

On July 15, 1970, the Little Horn State Bank of Hardin, Montana, entered into a loan agreement with Robert and Norma Stops. The amount of the loan was $3,538.00. The transaction between the Little Horn State Bank and the Stops took place in Hardin, Montana, which is located outside the exterior boundaries of the Crow Indian Reservation. The Stops are enrolled members of the Crow Tribe of Indians and reside within

the exterior boundaries of the Reservation. A dispute arose over non-payment of the loan and repossession by the bank of certain farm machinery, which damaged the Stops in the pursuit of their livelihood as farmers. The bank filed an action in the State District Court in the Thirteenth Judicial District in and for the County of Big Horn and process was served upon the Stops at their home within the confines of the Crow Reservation.

The case proceeded to trial by jury, and on February 23, 1976, a judgment in favor of the bank was entered in the amount of $3,541.24.

The Crow Tribe of Indians maintains a tribal court of general jurisdiction pursuant to the Code of Federal Regulations. This is commonly known as a Court of Indian Offenses. 25 CFR 11.1 *et seq.* Also, on January 31, 1976, the Crow Tribal Council adopted its own Law and Order Code which presently is being reviewed by the Secretary of the Interior before its formal implementation.

The bank made no attempt to enforce its judgment in tribal court.

Montana has not assumed civil or criminal jurisdiction on the Crow Indian Reservation pursuant to Public Law 280, the Act of August 15, 1953, 67 Stat. 588, as amended by portions of the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1321-22. See *Crow Tribe* v. *Deernose*, 158 Mont. 25, 487 P.2d 1133 (1971).

On February 23, 1976, a writ of execution was granted by the state district court and the bank proceeded to attach the wages of Robert Stops who is an employee of the United States Park Service at Crow Agency, Montana. The situs of said employment is within the exterior boundaries of the Reservation. On February 27, 1976,

the Stops filed a petition for injunctive relief in the state district court and asked for an order restraining the enforcement of the writ of execution. On the same day, the district court issued a temporary restraining order preventing the execution upon the wages or property of the Stops pending a hearing. On March 24, 1976, the district court issued an order and memorandum decision (App. B) granting a permanent injunction against levying or executing on the wages or property of the Stops within the Crow Indian Reservation.

The bank appealed the decision to the Supreme Court of Montana. That court reversed the district court and dissolved the injunction holding that:

1. A writ of execution from a state court may issue within an Indian reservation as a means of enforcing a valid state court judgment (App. A).

2. State action, in the form of a writ of execution to enforce a judgment arising from a transaction which occurred off-reservation, does not interfere with the Tribe's right to self-government.

Petitioner seeks review of the state decision by petition for writ of certiorari. In the alternative, petitioner prays for summary reversal without briefing on the merits.

REASONS FOR GRANTING THE WRIT

1. The decision below is in conflict with controlling decisions of this Court.

The holding below conflicts squarely with this Court's decision in *Kennerly* v. *District Court*, 400 U.S. 423 (1971). There this Court, in reversing the Montana Supreme Court, forbade the exercise of state jurisdiction within "Indian country" unless the prescribed procedures of § 7 of the Act of August 15, 1953, 67 Stat.

590 (hereinafter Public Law 280), as amended, 25 U.S.C. §§ 1321-1326, are followed. But once again in the instant case the Supreme Court of Montana has attempted to undercut this clear Congressional mandate and to ignore the strict scheme of Indian jurisdictional requirements.[1]

In *Kennerly*, a non-Indian creditor sued an Indian in a Montana state court to collect a debt that arose on the Blackfeet Reservation. The Blackfeet Tribe had attempted to "concurrently" transfer jurisdiction to the state courts in 1967. This Court held that in order for the state to assume such jurisdiction, the state must take the "affirmative legislative action" required by Public Law 280. *Kennerly* v. *District Court*, 400 U.S. at 427. Montana had not taken that action and, therefore, this Court held the state had no jurisdiction over the suit. Furthermore, after 1968, tribal consent was required to enable a state to assume civil jurisdiction over litigation against Indians on an Indian reservation. 25 U.S.C. § 1322(a); *Kennerly* v. *District Court*, 400 U.S. at 482-83.

In the instant case neither the state of Montana nor the Crow Tribe has acted to transfer civil jurisdiction.[2]

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[1] For a time the Montana Supreme Court followed the *Kennerly* holding. *E.g., Crow Tribe* v. *Deernose*, 487 P.2d 1133 (Mont. 1971); *Blackwolf* v. *District Court*, 493 P.2d 1293 (Mont. 1972); and *Security State Bank* v. *Pierre*, 511 P.2d 325 (Mont. 1973). The court below then deviated from these cases in *State ex rel. Firecrow* v. *District Court*, 536 P.2d 190 (Mont. 1975), *reversed per curiam sub nom. Fisher* v. *District Court*, 424 U.S. 382 (1976). Apparently, *Fisher* has made no impact on the court below, because, seven months later, the decision in this case was rendered.

[2] In 1964 the Crow Tribal Council passed Ordinance 64-2 (App. C) which evidences a clear intent on the part of the Tribe to deny Montana civil jurisdiction. Therefore, the questions raised in the cases of *State ex rel. Iron Bear* v. *District Court*, 512 P.2d 1292 (Mont. 1973) and *Bad Horse* v. *Bad Horse*, 517 P.2d 893 (Mont. 1974) *cert. denied*, 419 U.S. 847 (1974) are inapposite. *See Fisher* v. *District Court*, 424 U.S. at 388, fn. 12.

The Montana Supreme Court once before recognized the lack of state jurisdiction with relation to the Crow Tribe. *Crow Tribe* v. *Deernose*, 487 P.2d 1133, 1135 (Mont. 1971).

The importance of these requirements for assumption of state jurisdiction was underscored by this Court in *McClanahan* v. *Arizona State Tax Comm'n*, 411 U.S. 164, 177-178 (1973), when it held that:

> "Finally, it should be noted that Congress has now provided a method whereby States may assume jurisdiction over reservation Indians. Title 25 U.S.C. § 1322(a) grants the consent of the United States to States wishing to assume the criminal and civil jurisdiction over reservation Indians, and 25 U.S.C. § 1324 confers upon the States the right to disregard enabling acts which limit their authority over such Indians. But the Act expressly provides that the State must act 'with the consent of the tribe occupying the particular Indian country,' 25 U.S.C. § 1322(a) . . . ."

The above principal, known as pre-emption, is defined commonly as a test to see whether the federal government has authorized a particular state to extend its law and civil jurisdiction into Indian country. It derives from the plenary and exclusive power of the federal government to deal with Indian tribes, *United States* v. *Mazurie*, 419 U.S. 544 (1975), and *Morton* v. *Mancari*, 417 U.S. 535 (1974), and to regulate and protect the Indians and their property against unauthorized interference by a state. *Bryan* v. *Itasca County* —— U.S. ——, ——, 96 S.Ct. 2102, 2105, fn. 2 (1976).

The court below also subverted the clear meaning of this Court's recent decision in *Fisher* v. *District Court*, 424 U.S. 382 (1976). *Fisher* involved an adoption proceeding that was initiated in a Montana district court. All of the parties involved were members of the Northern

Cheyenne Tribe. Two significant factors guided the Court in *Fisher*. First, the Northern Cheyenne Tribe had been protected consistently by federal treaties and statutes. Secondly, no federal statute sanctioned interference with tribal self-government, Montana never having assumed civil jurisdiction pursuant to Public Law 280.

Both of the factors are applicable to the Crow Reservation. Subject-matter jurisdiction is just one aspect of civil jurisdiction.[3] The attachment process is also a significant aspect which by definition necessitates a significant judicial intrusion into Indian country. *McClanahan* v. *Arizona State Tax Comm'n*, *supra*. Nowhere does the lower court indicate where a state court obtains the power to execute on personal property within the Crow Reservation. Since the execution process is a law of general application in Montana, the Indian Civil Rights Act, 25 U.S.C. § 1322(a), requires specific, affirmative state and tribal action before that process can apply to Indians on the Crow Reservation.[4]

The decision of the court below also conflicts directly with *Williams* v. *Lee*, 358 U.S. 217 (1959). The judicial intervention by the state district court infringes on the right of the Crow Indians to govern themselves. This right has been long recognized by this Court. *United States* v. *Kagama*, 118 U.S. 375 (1886); *United States*

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[3] It does not follow that because a state court may obtain subject matter jurisdiction that it also obtains the right to attach personal property of Indians within Indian country. *See Annis* v. *Dewey County Bank*, 335 F. Supp. 133 (D.S.D. 1971). *Contra State Securities, Inc.* v. *Anderson*, 506 P.2d 786 (N.M. 1973), *but see* the dissent of Judge Montoya who makes this distinction. *Id.* at 789-793. It is emphasized that although the court below here relied on the latter case as an analogy, nowhere did the majority opinion in *Anderson* discuss the problem of execution. *See also Williams* v. *Lee*, 319 P.2d 998, 1002-1003 (Ariz. 1958).

[4] See footnote 2, *supra*.

v. *Quiver*, 241 U.S. 602 (1916); and *United States* v. *Mazurie*, *supra*.

In *Williams* v. *Lee*, *supra*, this Court held that a non-tribal-member-creditor could not institute a debt action which arose on the Navajo Reservation against a member-debtor in an Arizona district court. This Court ruled that the tribal court system was the proper forum. 358 U.S. at 222-23. The test to be applied where Indian and state interests come into conflict is:

> "Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of the reservation Indians to make their own laws and be ruled by them." *Id.* at 220.[5]

The Crow Tribe maintains a tribal Court of Indian Offenses. 25 C.F.R. Pt. 11. It has been the recent policy of the federal government to strengthen these tribal procedures through Congressional authorizations and appropriations.[6] Under these circumstances, as in *Williams* v. *Lee*, *supra*, an exercise of state jurisdiction would undermine the authority of the tribal courts over reservation affairs and, hence, would infringe upon the right of the Indians to govern themselves.[7]

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[5] It is submitted that in light of *Kennerly* v. *District Court*, *supra*, *McClanahan* v. *Arizona State Tax Comm'n*, *supra*, and *Fisher* v. *District Court*, *supra*, that this test is probably not applicable to the case at bar. However, it is noted that even under the "infringement test" which, as utilized by the lower court here, 555 P.2d at 213 (App. A, pp. 6a-7a), is completely misconstrued.

[6] Indian Civil Rights Act, 25 U.S.C. § 1311; Indian Self-Determination Act, 25 U.S.C. § 450 *et seq.*; Indian Reorganization Act, 25 U.S.C. §§ 461 *et seq.*

[7] *See also Fisher* v. *District Court*, *supra*.

2. The decision below overlooks the quasi-sovereign status of the Crow Tribe and destroys tribal self-government.

The Crow Tribe first entered into treaties with the United States in 1825. Treaty with the Crow, 7 Stat. 266. This was followed by the Treaty of Fort Laramie, 1851, 11 Stat. 749. According to the second Treaty of Fort Laramie, 1868, 15 Stat. 649, two important federal recognitions were provided in Article II. First, lands were "set apart for absolute and undisturbed use and occupation of the Indians herein named."[8] Second, "no persons except herein designated and authorized to do so" were allowed on those lands.[9] The sanctity of the 1868 Treaty has not been altered by subsequent legislation, and if anything, it has been reinforced.[10]

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[8] *See McClanahan* v. *Arizona State Tax Comm'n*, 411 U.S. at 175; *Moe* v. *Confederated Salish and Kootenai Tribes*, 425 U.S. 463 (1976).

[9] ". . . and the United States now solemnly agrees that no persons, except those herein designated and authorized so to do, and except such officers, agents, and employees of the government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article for the use of said Indians . . ." 15 Stat. at 650.

[10] The following statutes are subsequent legislative treatment as to the Crow Reservation. Two things are most apparent from this legislation. None of it alters the Treaty of 1868 and most of it provides for authorizations to conduct tribal business.

Agreement with the Crows, 1881, 22 Stat. 42 (fourth clause —Treaty of 1868); Agreement with the Crows, 1881, 22 Stat. 157 (refers to Treaty of 1868); Agreement with the Crows, 1890, 26 Stat. 1042 (clause 14—appropriations for tribal council and clause 15—Treaty of 1868); Act of April 27, 1904, 33 Stat. 352 with Amendment (Article VII—all former treaties not inconsistent are still in force, and Act II, clauses 12 and 13—monies reserved for tribal purposes); Act of June 4, 1920, 41 Stat. 751 (Sec. 18—money for expenses of general council); Act of May 19, 1926, 44 Stat. 566 (Sec. 18—money for expenses of general council). The allotment period ceased with the enactment of 25 U.S.C. § 462.

At present the Crow Tribe meets the two recognized tests as recently set forth in *Moe* v. *Confederated Salish and Kootenai Tribes*, 425 U.S. 463, 476 (1976): that the Crow Tribe has not abandoned its tribal organization and that the treaties and subsequent statutes maintain an existing Indian reservation.

The State of Montana, on the other hand, as a precondition to statehood, placed in its constitution a disclaimer of all right, title, and interest to Indian land.[11] It was a provision that essentially paralleled the state's territorial act.[12]

In 1953, pursuant to Public Law 280, the State of Montana was allowed to amend this impediment to its assumption of civil jurisdiction over the Indian reservations in Montana.[13] In 1972, Montana enacted a new constitution which reaffirmed the previous disclaimer language. Article I, Montana Constitution (1972). As for the Crow Reservation, the Montana Supreme Court in *Crow Tribe* v. *Deernose*, *supra*, has previously recognized the Crow Reservation as an "existing Indian reservation."

Nevertheless, that court in the instant case has made a *sua sponte* determination that Crow tribal self-government may be cast aside without taking heed of available tribal remedies.[14] Furthermore this determination is blind to

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[11] The Enabling Act, 1889, 25 Stat. 676, 677, admitted Montana, Washington, North and South Dakota. Section 4 contained the disclaimer provision. *See* Ordinance No. 1, Section 2 of Montana Constitution (1889).

[12] Organic Act of the Territory of Montana, 1864, 13 Stat. 85.

[13] *State ex rel. McDonald* v. *District Court*, 496 P.2d 78 (Mont. 1972).

[14] Although it is the position of petitioner that both federal and tribal remedies are available, the proposition of the lower court that it may exert state judicial intervention where a tribe is specifically not acting has never been of any consequence to this Court. *McClanahan* v. *Arizona State Tax Comm'n*, *supra*, and *Kennerly* v. *District Court*, *supra*. The proposition has been re-

the long standing Federal Indian policy of fostering the development of viable tribal judicial systems on reservations such as Crow.[15] Pursuant to 25 U.S.C. §§ 2 and 9, the Secretary of the Interior has promulgated rules and regulations that govern the procedures of a Court of Indian Offenses. 25 C.F.R. Pt. 11.[16] The staffing and operation of such a court is left to the Tribe. The Tribe does have the option, with the approval of the Secretary, to promulgate its own ordinances. 25 C.F.R. § 11.1(e).[17] The Crows have enacted their own jurisdictional statute that complements 25 C.F.R. § 11.22C.[18] The laws applicable to civil actions are found at 25 C.F.R. § 11.23(c). When federal or tribal laws or customs are not applicable, the substantive laws shall be decided by the tribal court "according to the laws of the State in which the matter in dispute may lie." 25 C.F.R. § 11.24C covers the enforcement of judgments in civil actions.

The Little Horn State Bank has not pursued its available tribal remedies to enforce the judgment obtained in the state district court.[19] Execution of the state judgment within the Reservation by the state sheriff would be

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jected by other jurisdictions. *See Schantz* v. *White Lightning*, 502 F.2d 67, 69-70 (8th Cir. 1974), and *Nelson* v. *Dubois*, 232 N.W.2d 54, 57-58 (N.D. 1975).

[15] *See Williams* v. *Lee, supra; Fisher* v. *District Court, supra*; and Indian Civil Rights Act, 25 U.S.C. § 1311.

[16] The regulations, as promulgated by the Secretary of the Interior, are governed by the Indian Civil Rights Act, 25 U.S.C. § 1302. *Big Eagle* v. *Andrea*, 418 F. Supp. 126 (D.S.D. 1976). Non-Indians who appear in tribal courts are afforded the same protections as Indians. *See Dodge* v. *Nakai*, 298 F. Supp. 17 (D. Ariz. 1968).

[17] There is presently pending for approval before the Secretary of the Interior a Law and Order Code promulgated by the Crow Tribe.

[18] Resolution 64-2 of the Crow Tribe (App. C).

[19] The determination by the lower court that the tribal court need not afford the state court judgment "full, faith and credit" is simply premature. If it is assumed this is of significance, the tribal court has never had the opportunity to pass on the question.

disregarding those judicial, protective procedures that are afforded enrolled members and their real and personal property as long as both are within the Reservation boundaries. Furthermore, the state sheriff would be clothed with jurisdictional authority which neither the federal government nor the Crow Tribe has ever contemplated.[20]

3. The decision below creates confusion and contradicts decisions in other jurisdictions.

a. The decision below creates jurisdictional confusion among Indian tribes and peoples within Montana.

Although *Fisher* v. *District Court, supra*, was a *per curiam* decision by this Court, it was anticipated by Indian peoples and tribes that that decision would give some guidance to the State of Montana in its persistent attempts to judicially intervene in tribal affairs.[21] There are in Montana 27,000 Indian people living on seven viable and distinct federally recognized Indian reservations: Flathead—Confederated Salish and Kootenai Tribes; Fort Peck—Assinniboin Sioux; Fort Belknap—Gros Ventre; Rocky Boy—Chippewa Cree; Blackfeet; Northern Cheyenne and Crow. Each possesses a tribal court system and system of law and order. The State of Montana has never affirmatively enacted any legislation in order to assume responsibilities on those reservations or to spread its laws of general applicability to those reservations. The tribes on the reservations have never contemplated state jurisdictional intrusions, except the Flathead.[22]

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[20] *See* Articles I & II, Treaty with the Crows, 1868, 15 Stat. 649.

[21] The petitioner is also not unmindful of the recent case of *Moe* v. *Confederated Salish and Kootenai Tribe, supra*, which also outlined a restraint on the State of Montana in its efforts to tax the personal property of Indians within the Flathead Reservation.

[22] *See*, fn. 13, *supra*.

b. *The decision below is inconsistent with prior federal and state court holdings.*

The court below is in conflict with at least two federal courts. In *Annis* v. *Dewey County Bank*, 335 F. Supp. 133 (D.S.D. 1971), the court granted an injunction against a sheriff who attempted to attach cattle within the Cheyenne River Reservation. The loan for the cattle was made off the reservation. The judgment for the debt was rendered by the state court off the reservation. The *Annis* court outlined the problems with South Dakota's disclaimer statute [23] and that state's lack of affirmative action under Public Law 280. The court, relying on *Kennerly* v. *District Court, supra*, held that neither South Dakota nor the Tribe had complied with Congressional procedures in order to obtain jurisdiction.[24] Specifically, the *Annis* court stated:

> "The actual attachment by state officials must be made on the reservation and state officials have no jurisdiction on Indian reservations either to serve process on an enrolled Indian or to enforce a state court judgment." 335 F. Supp. at 135-136.

Likewise, in *Arizona ex rel. Merrill* v. *Turtle*, 413 F.2d 683 (9th Cir. 1969), it was held that the State of Arizona had no authority to exercise extradition jurisdiction over Indian residents of the Navajo Reservation in Arizona.[25] Relying on *Williams* v. *Lee, supra*, the court held

[23] Identical to Montana's. *See* fn. 11, *supra*.

[24] The *Annis* court specifically quoted from *Crow Tribe* v. *Deernose, supra*, that "absent specific Congressional authorization coupled with strict compliance with its terms, state courts acquire no jurisdiction they assert." 335 F. Supp. at 135.

[25] The lower court here recently defied the instruction of *Turtle* in *State ex rel. Old Elk* v. *District Court*, 552 P.2d 1394 (Mont. 1976). *Old Elk* involved the validity of an arrest on the Crow Reservation. The court below ignored the treaties of the Crow Reservation and, more importantly, the viable procedure to apprehend wrong-doers. 25 C.F.R. § 11.2(b). The New Mexico Supreme Court also disagrees with *Old Elk*. *Bennally* v. *Marcum*, 553 P.2d 1270 (N.M. 1976).

that Arizona's purported right was subservient to "the right of reservation Indians to make their own laws and be ruled by them." 413 F.2d at 685.

The lower court decision also is inconsistent with numerous other state jurisdictions. In *Commissioner* v. *Brun*, 174 N.W.2d 120 (Minn. 1970), after holding that the State of Minnesota's personal property tax was a debt, the court held that the inability of the State of Minnesota to execute within the Red Lake Reservation defeats an extension of that state's taxing power. *Id.* at 126.

Recently, the Supreme Court of Arizona has held that a county sheriff clothed with the powers of the state cannot serve process within the Papago Reservation. *Francisco* v. *State*, No. 12444-PR (decided Sept. 28, 1976). The court there specifically relied on the creation and existence of the Papago Reservation, the scheme of disclaimer of state jurisdiction in Indian country by Arizona, and the instructions of *Kennerly* v. *District Court, supra*.[26]

[26] *See also Martin* v. *Denver Juvenile Court*, 493 P.2d 1093 (Colo. 1972), and *County of Beltrami* v. *County of Hennepin*, 264 Minn. 406, 119 N.W.2d 25 (1963).

CONCLUSION

For the reasons stated the petitioner respectfully submits that this petition for a writ of certiorari be granted, or, in the alternative, that the decision below be summarily reversed.

Respectfully submitted,

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January 1977.

APPENDICES

APPENDIX A

No. 13338

IN THE SUPREME COURT OF THE STATE OF MONTANA 1976

LITTLE HORN STATE BANK,
Plaintiff and Respondent,

—VS—

ROBERT STOPS AND NORMA STOPS,
Defendants and Respondents.

Appeal from: District Court of the Thirteenth Judicial District, Honorable Charles Luedke, Judge presiding.

Counsel of Record:

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Thomas J. Lynaugh argued, Billings, Montana

Submitted: September 9, 1976
Decided: Oct. 7, 1976

Filed: Oct. 7, 1976

/s/ Thomas J. Kearney
Clerk

Mr. Chief Justice James T. Harrison delivered the Opinion of the Court.

This is an appeal from an order entering a permanent injunction against levying or executing upon the property of respondents within the Crow Indian Reservation. The injunction was ordered in the district court of Big Horn County.

This appeal adds another chapter to the never ending story of Indian jurisdiction. The relevant facts are as follows:

Respondents, members of the Crow Indian Tribe residing on the Crow Indian Reservation, obtained a loan from appellant bank located in Hardin, Montana, and failed to repay the loan. This commercial transaction took place at the bank *which is located outside the exterior boundaries of the Crow Indian Reservation.* Process was served upon respondents on the reservation. Thereafter appellant obtained a judgment in the district court of the thirteenth judicial district in the amount of $3,541.24. Following this judgment on February 18, 1976, execution was issued by the district court on February 23, 1976. The writ of execution was directed to the sheriff of Big Horn County, who proceeded to garnish the wages of respondents earned on the reservation but within Big Horn County. Respondents sought and obtained injunctive relief against the writ of execution. Appellant seeks to dissolve the permanent injunction and be allowed to levy upon the respondents' property and wages within the reservation.

Respondents did not attack the district court's subject matter jurisdiction or personal jurisdiction at the district court level or before this Court. Both of these issues have been laid to rest by Mescalero Apache Tribe v. Jones, 411 U.S. 145, 93 S.Ct. 1267, 36 L Ed 2d 114, 119, and Bad Horse v. Bad Horse, 163 Mont. 445, 517 P.2d

893, cert. den. 419 U.S. 847, 95 S.Ct. 83, 42 L Ed 2d 76.

A review of the district court's jurisdiction had no Indian jurisdictional dispute been involved, is useful to this decision. It has been a long standing doctrine that any court having jurisdiction to render a judgment also has the power to enforce that judgment through any order or writ necessary to carry its judgment into effect. U.S. ex rel. Riggs v. Johnson County, 6 Wall. 166, 18 L.Ed 768 (1868); Pam-to-Pee v. United States, 187 U.S. 371, 23 S.Ct. 142, 47 L.Ed 221 (1902); Hamilton v. Nakai, 453 F.2d 152, cert. den. 406 U.S. 945, 92 S.Ct. 2044, 32 L Ed 2d 332.

The United States Supreme Court defined "jurisdiction" at p. 773 in *Riggs*:

> "* * * Jurisdiction is defined to be the power to hear and determine the subject matter in controversy in the suit before the court, and *the rule is universal, that if the power is conferred to render the judgment or enter the decree, it also includes the power to issue proper process to enforce such judgment or decree.* * * *
>
> "Express determination of this court is that the jurisdiction of a court is not exhausted by the rendition of the judgment, but continues until that judgment shall be satisfied. * * *" (Emphasis added.)

The Montana legislature enacted section 93-1106, R.C.M. 1947, which contains language analagous to this principle. We have interpreted section 93-1106 to confer upon a court, having proper jurisdiction, all the means necessary to carry the same into effect, and if the court has the power to make an order, it has jurisdiction to enforce that order. State ex rel. Eisenhauer v. District Court; 54 Mont. 172, 168 P. 522.

The district court initially sought to enforce its judgment by a writ of execution pursuant to section 93-5801 et seq., R.C.M. 1947. A writ of execution against property of a judgment debtor may be issued by the district court to the sheriff of any county in the state. Section 93-5809, R.C.M. 1947. Thus, a district court has statewide enforcement power under that section. However, the writ must issue to the proper sheriff, since a sheriff has no authority to serve the writ outside of his county. Merchants Credit Service v. Choteau Co. Bank, 112 Mont. 229, 114 P.2d 1074.

Absent the existence of the Crow Indian Reservation, there is no question that this writ of execution would be a valid means of enforcing the judgment of the district court. The property subject to the writ was located within Big Horn County, the writ was directed to the sheriff of Big Horn County, and all other essential elements of a valid writ of execution existed.

Respondents urge us to hold that a court having jurisdiction to render a judgment does not have the power to enforce that judgment because the property subject to such writ is located on the Crow Indian Reservation. In effect, they ask that the reservation be treated on an even par with our sister states. Such a situation would not be feasible, since the Crow Tribe does not provide for the honoring of state court judgments, nor is the full-faith and credit clause applicable to the tribe. Had the judgment debtor's property been located in a sister state, appellant bank could have obtained a judgment in that state by pleading the Montana judgment and showing the jurisdictional requirements. Such a conclusion is not available in our situation.

The task to be performed by this Court is to determine whether or not the State action taken in this case is acceptable under the doctrines concerning state jurisdiction over Indian reservations.

The United States Supreme Court has applied different rationale from time to time, and the recent court decisions must be read as a whole to arrive at the proper test to be applied in this case. The initial test was propounded in Williams v. Lee, 358 U.S. 217, 79 S.Ct. 269, 3 L Ed 2d 254, which stated:

> "* * * Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them."

This test was apparently overruled by Kennerly v. District Court of Montana, 440 U.S. 423, 91 S.Ct. 480, 27 L Ed 2d 507. However, in McClanahan v. Arizona Tax Commission, 411 U.S. 164, 93 S.Ct. 1257, 36 L Ed 2d 129, 140, 141, the Court revived the *Williams* test stating:

> "* * * It must be remembered that cases applying the Williams test have dealt principally with situations involving non-Indians. [Citations omitted.] In these situations, both the tribe and the State could fairly claim an interest in asserting their respective jurisdictions. The Williams test was designed to resolve this conflict by providing that the State could protect its interest up to the point where tribal self-government would be affected.
>
> "* * *
>
> "* * * This Court has therefore held that 'the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.' "

The Court still adheres to the *Williams* test as evidenced by the recent decision of Fisher v. District Court of Montana, 44 U.S.L.W. 3940 (U.S. March 1, 1976), when the court applied the *Williams* test, even though all parties were members of the Northern Cheyenne Tribe, and the litigation arose on the reservation.

The *Williams* test is appropriate to review this appeal. The litigation involves a member of the Crow Tribe residing on the Crow Indian reservation and a nonmember, located off the reservation. It is important to note that the transaction in dispute arose off the reservation. Therefore, we must determine whether state action, in the form of a writ of execution to enforce a judgment rendered on a transaction arising outside the reservation, interferes with the tribe's right to make its own rules and be governed by them.

We hold that it does not.

The cases holding that such interference has occurred present a combination of the transaction occurring on the reservation and the tribal court providing jurisdiction over such matters. In *Williams* the tribal court exercised jurisdiction over disputes over commercial transactions arising on the reservation between members and nonmembers. In Security State Bank v. Pierre, 162 Mont. 298, 511 P.2d 325, the tribal court provided for civil litigation between members and nonmembers. In *Fisher*, the most recent United States Supreme Court case so holding, the facts relating to the child custody dispute all arose on the reservation, and the Crow Tribe provided for custody litigation among members (all parties were members of the Crow Tribe). We note that in the situation at hand the Crow Tribal Court only exercises jurisdiction over civil litigation between members and nonmembers if both parties so stipulate.

However, what is in issue in this case is the enforcement of a valid judgment, not the proper court to initiate the litigation. The transaction did not occur on the reservation as in the above cases but outside the reservation boundaries. The subject matter jurisdiction was within the state court, not the tribal court. The Crow Tribe provides no means of enforcing state court judg-

ments, no method of attaching property of a state judgment debtor, and is not subject to the full faith and credit clause as sister states are. Until the Crow Tribe has provided a means of such enforcement or acted in some manner within this area, we fail to see how tribal self-government is interfered with by assuring that reservation Indians pay for their debts incurred off the reservation.

The crucial fact of this appeal is that the subject matter jurisdiction lies with the state court, not the tribal court. In this case the tribal members elected to leave the reservation and conduct their affairs within the jurisdiction of the state courts. When they do so they are submitting themselves to the laws of this state. They cannot violate those laws and then retreat to the sanctuary of the reservation for protection. The cases analagous to the situation presented here are: State Securities, Inc. v. Anderson, 84 N.M. 629, 506 P.2d 786, 789; Natewa v. Natewa, 84 N.M. 69, 499 P.2d 691, 693; and State ex rel. Old Elk v. District Court, —— Mont. ——, 552 P.2d 1394, 33 St.Rep. 637 (1976). In all of these cases the state court properly had jurisdiction over the dispute at hand and process was allowed on the reservation to bring the Indian defendant before the state court.

In *Natewa*, the wife, a Zuni Indian living in Wisconsin, brought a URESA action against her ex-husband, a Zuni Indian residing on the Zuni Indian Reservation in New Mexico. The New Mexico Supreme Court upheld the New Mexico District Court's order directing the ex-husband to pay child support, saying:

> "* * * Appellant cannot interpose his special status as an Indian as a shield to protect him from obligations that result from his marriage to appellee which had been entered into off the reservation. * * *"

In *State Securities*, a corporation brought suit to recover on notes contracted off the reservation by Navajo Indians. The New Mexico Supreme Court allowed service upon the Indians while they were on the reservation, stating at p. 789:

> "State jurisdiction does not eliminate Indian jurisdiction, it exists concurrently with it. There is no interference with Indian self-government. * * *
>
> "* * *
>
> "* * * Exclusive jurisdiction in Indian courts, which do not necessarily apply state law, may result in shielding Indians from obligations incurred off the reservation."

We have taken a similar position in *Old Elk*, holding that a sheriff of this state may serve a warrant for the arrest of an Indian on the reservation, when the crime has occurred off the reservation.

The respondents elected to be governed by the laws of this state when they left the boundaries of the reservation to obtain the loan from the appellant. This was not a case of a nonmember choosing to transact his business within the boundaries of the Indian reservation as in *Williams*, *Kennerly*, and *Pierre*.

The United States Supreme Court stated in Mescalero Apache Tribe v. Jones, 411 U.S. 145, 93 S.Ct. 1267, 36 L Ed 2d 114, 119:

> "* * * Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the state." [Citations omitted.]

Here the respondents did go beyond the boundaries of the Crow Indian reservation and the execution statutes are nondiscriminatory and are otherwise applicable to all citizens of Montana.

This appeal essentially boils down to whether the jurisdiction granted in *Mescalero* is the same as that defined by the United States Supreme Court in *Riggs* and *Pam-to-Pee*, or is it merely the opportunity to render a judgment incapable of enforcement. The latter would be absurd. As the Court said in *Pam-to-Pee*, at p. 226:

> "The award of execution is a part, and an essential part, of every judgment passed by a court exercising judicial power. It is no judgment, in the legal sense of the term, without it. Without such an award the judgment would be inoperative and nugatory, leaving the aggrieved party without a remedy. It would be merely an opinion, which would remain a dead letter, and without any operation upon the rights of the parties * * *."

To avoid such an illogical situation we hold that a writ of execution from a state court is valid within the Indian reservation when such is a means of enforcing a valid judgment of that court.

As we stated in *Old Elk* at 643:

> "Individual rights, due process, impartial and effective maintenance of justice and the public confidence in and respect for the courts are paramount in the resolution of these kinds of matters. However, these rights and duties are owed to all citizens not only those residing within the exterior boundaries of an Indian reservation. The citizens of Montana generally and Big Horn County particularly would be grossly deprived if under the guise of *individual* due process they not only had no speedy, adequate remedy, but *no* remedy at all."

As stated earlier, the state court was the only forum available to the appellant. The tribal court lacked subject matter jurisdiction. No federal jurisdiction could be invoked, since there was no federal question, no diversity of citizenship, and the amount in controversy was

less than $10,000. The state court had the jurisdiction to render its judgment, not even the respondents contest this. Such would not be a judgment without the power to enforce the same. The only available and peaceful means of enforcement to the appellant was the writ of execution from the state court. Without such, the result would be a "catch-us-off-the-reservation" situation, which could possibly lead to breaches of the peace.

In *Old Elk* we held that an Indian may not violate the criminal laws of this state while off the reservation, and then return to the sanctuary of the reservation and throw up his Indian status as a shield against enforcement of those criminal laws. We now hold the same is true for the civil laws of this state.

We are not unmindful of Annis v. Dewey County Bank, 335 F.Supp. 133 (1971) cited by respondents. The federal court cited authority from South Dakota and Minnesota in holding that state officials had no jurisdiction on Indian reservations either to serve process on an enrolled member or to enforce a state judgment. The law of this state is directly contrary and in accord with New Mexico, as evidenced by *Old Elk*. We do not agree with the law cited by the federal court in *Annis*, nor do we agree with their rationale.

The decision of the district court is reversed and the injunction dissolved and vacated.

/s/ James T. Harrison
Chief Justice

We concur:

/s/ Wesley Castles

/s/ John Conway Harrison

/s/ Frank I. Haswell
Justices

/s/ Robert Sykes
HON. ROBERT SYKES, District Judge,
sitting in place of Mr.
Justice Gene B. Daly.

APPENDIX B

IN THE DISTRICT COURT OF THE
THIRTEENTH JUDICIAL DISTRICT OF THE
STATE OF MONTANA
IN AND FOR THE COUNTY OF BIG HORN

LITTLE HORN STATE BANK, *Plaintiff*, vs. ROBERT STOPS AND NORMA STOPS, *Defendants.*	Cause No. 8087

ORDER

This matter arises upon an Order to Show Cause and Temporary Restraining Order issued at the instance of the defendants to which the plaintiff has filed its return admitting the factual allegations of defendants' petition, and the issue raised has become submitted to the Court upon the written briefs of the parties, all of which have been duly considered, and

IT IS ORDERED that defendants' petition should be, and hereby is, granted. The plaintiff is permanently enjoined from levying execution on the judgment entered herein upon the property of the defendants and their wages within the Crow Indian Reservation.

Dated this 24th day of March, 1976.

ORIGINAL SIGNED

/s/ Charles Luedke
CHARLES LUEDKE
District Judge

MEMORANDUM

Plaintiff brought action in the above-entitled court upon a promissory note which the defendants signed at plaintiffs' place of business off the Crow Indian Reservation and secured judgment, after a jury trial, in the amount of $3,541.24. Subsequently, the plaintiff secured a writ of execution and served the same upon the employer of defendant Robert Stops, being the U.S. National Park Service, and also upon the employer of defendant Norma Stops, being the U.S. Public Health Service, seeking to take the wages of the defendants for application upon the judgment. Both defendants are enrolled members of the Crow Tribe and the employment they are engaged in takes place upon the Crow Indian Reservation, Montana.

The issue raised is whether State court process can be utilized to enforce a State court judgment against an Indian by execution upon his property located within the boundaries of the reservation.

It is the position of the plaintiff that this Court has already ruled, acting through another judge, that subject matter jurisdiction and jurisdiction over the defendants exists. Enforcement of the judgment, therefore, is a concomitant of the jurisdiction already obtained by the off-reservation activity of defendants.

The defendants, on the other hand, rely particularly upon *Annis* v. *Dewey County Bank*, 335 F.Supp. 133 (1971) in which a state court judgment was secured, arising out of an off-reservation transaction, but enforcement on the reservation against defendant's property was enjoined for lack of jurisdiction. In effect that court found that the jurisdiction resulting from an off-reservation setting does not pierce the reservation boundaries for enforcement purposes because it would constitute an infringement upon the right of reservation Indians to make their own laws and be ruled by them, which infringe-

ment is permissible only upon compliance by the state and the Indians with the Acts of Congress by which state jurisdiction is extended onto the reservation. Such compliance had not been accomplished as to the reservation involved in *Annis* and it has not been accomplished as to the Crow Indian Reservation.

I find the principles relied upon in *Annis* to be relevant to this case and persuasive as to the result mandated by the present standing of the law.

Dated this 24th day of March, 1976.

ORIGINAL SIGNED

/s/ Charles Luedke
CHARLES LUEDKE
District Judge

cc: Clarence T. Belue
Cate, Lynaugh, Fitzgerald & Huss

APPENDIX C

RESOLUTION NO. 64-2

A RESOLUTION OF THE CROW TRIBAL COUNCIL RELATING TO JURISDICTION OVER MEMBERS OF THE CROW TRIBE.

WHEREAS, the Supreme Court of the State of Montana has ruled that State Courts have no jurisdiction over an Indian if an Indian commits a crime at any place which was once a part of an Indian Reservation, even though the Federal Government has relinguished its title to the land where the crime was committed, and even though the crime is made an offense by a Federal Statute;

AND WHEREAS, TITLE TO and rights-of-way of lands are still held by the United States in trust for the Crow Tribe and members of the Crow Tribe upon lands which were once a part of the Crow Indian Reservation and the Crow Tribe has never at any time waived the right of the members of said tribe of Indians to jurisdiction over them by relinquishing jurisdiction to the State of Montana;

BE IT RESOLVED, by the Crow Tribal Council that all jurisdiction in both criminal and civil action in any and all actions now pending in any court or hereafter commenced in any court has not at any time been relinquished to any state court, and the Crow Tribal Council hereby expressly retains jurisdiction over any and all criminal and civil action where members of the Crow Tribe are involved, that jurisdiction of all such actions shall at all times be retained in the Tribal and Federal Courts and,

WHEREAS, that the above resolution shall become enforced and in effect immediately.

PASSED, ADOPTED AND APPROVED, this 13th day of July, 1963, by the Crow Tribal Council by —— votes for passage and adoption and —— votes against. Unanimous X.

/s/ John B. Cummins
Chairman
Crow Tribal Council

ATTEST:

/s/ Arlis Whiteman
Secretary
Crow Tribal Council

I do recommend ——————————.

I do not recommend. ——————————.

——————————

Superintendent
Crow Indian Agency
Crow Agency, Montana

In The

Supreme Court of the United States

October Term, 1976

No. 76-931

ROBERT STOPS AND NORMA STOPS,

Petitioners,

vs.

LITTLE HORN STATE BANK,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Little Horn State Bank, respondent, opposes the petition for writ of Certiorari.

OPINIONS BELOW

The judgment of the Supreme Court of the State of Montana is reported as *Little Horn State Bank v. Robert Stops and Norma Stops,* 555 P. 2d 211 (Mont. 1976), and is reproduced as *Petitioners'* App. A. The Order and Memorandum of the District Court of the Thirteenth Judicial District of the State of Montana in and for the County of Big Horn is unreported and is reproduced as *Petitioners'* App. B.

———o———

JURISDICTION

The judgment of the Supreme Court of the State of Montana was entered on October 7, 1976. The jurisdiction of this court is invoked under 28 U. S. C. § 1257 (3).

———o———

QUESTION PRESENTED

Whether the Montana state courts and the sheriff of Big Horn County have jurisdiction to enforce an order of execution within the exterior boundaries of the Crow Indian Reservation on personal property owned and on wages earned by enrolled members of the Crow Tribe who earn their income and reside within the Reservation, when the judgment was rendered off the Reservation.

———o———

STATEMENT OF THE CASE

The facts of the case are stated fully in the decision of the Supreme Court of the State of Montana (*Petitioners'* App. A.)

———o———

ARGUMENT

I.

There is no conflict with the decisions of this Court.

Petitioners claim the decision below conflicts with *Williams, Kennerly, McClanahan* and *Fisher.*[1] But, none of these cases rule upon the question here presented—whether the state can enforce its judgment within the reservation. The decisions which do touch upon the question support the decision below.

Riggs v. Johnson, 6 Wall. 166 (1868), established the long standing doctrine of this court that any court having jurisdiction to render a judgment also has the power to enforce that judgment through any order or writ necessary to carry the judgment into effect.[2]

---

1 **Williams v. Lee,** 358 U. S. 217 (1959). **Kennerly v. District Court,** 400 U. S. 423 (1971). **McClanahan v. Arizona State Tax Comm'n,** 411 U. S. 164, 177, 178 (1973). **Fisher v. District Court,** 424 U. S. 382 (1976).

2 **U. S. ex rel. Riggs v. Johnson County,** 6 Wall. 166, 18 L. Ed. 768 (1868). **Pam-to-Pee v. United States,** 187 U. S. 371, 23 S. Ct. 142, 47 L. Ed. 221 (1902). **Hamilton v. Nakai,** 453 F. 2d 152, cert. den. 406 U. S. 945, 92 S. Ct. 2044, 32 L. Ed. 2d 332.

Utah & Northern R. v. Fisher, 116 U. S. 28 (1885) upholds the power of states to protect legitimate interests in the affairs of non-Indians within the reservation. This decision generally approved the doctrine that process of state courts may run into an Indian reservation where the subject matter or controversy is otherwise with their cognizance.[3] Petitioners concede subject matter jurisdiction and the validity of the state judgment. The state cannot enforce the judgment except by its own processes.[4] It is absurd to uphold the validity of the judgment, but to render it incapable of enforcement.[5]

II.

The decision below does not interfere with tribal self-government.

The concept of tribal self-government includes the corollary that off reservation activities are not a proper

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3 **Utah & Northern R. v. Fisher,** 116 U. S. 28, 31 (1885).

4 The full faith and credit clause is not applicable to the tribe. Petitioners imply that the judgment may be enforced by the tribal court pursuant to 25 C. F. R. § 11.24C. This is not possible for two reasons, (1) the non-Indian has no access to the tribal court without the consent of the Indian litigant, (See 25 C. F. R. § 11.22C) and (2) § 11.24C applies to enforcement of tribal court judgments only. The C. F. R. provides no means of enforcing the state court judgment by tribal court.

5 See the decision below (Petitioners' App. A, p. 9a) quoting **Pam-to-Pee,** at p. 226 as follows:

> "The award of execution is a part, and an essential part, of every judgment passed by a court exercising judicial power. It is no judgment, in the legal sense of the term, without it. Without such an award the judgment would be inoperative and nugatory, leaving the aggrieved party without a remedy. It would be merely an opinion, which would remain a dead letter, and without any operation upon the rights of the parties * * *."

subject of that government.[6] The history of the concept as reviewed by this court in *McClanahan v. Arizona State Tax Comm'n,* 411 U. S. 164, 177-178 (1973), also acknowledges that the concept is limited to "when they preserved their tribal relations." *McClanahan v. Arizona State Tax Comm'n,* 411 U. S. 164, 93 S. Ct. 1257, 1263, 36 L. Ed. 2d 129 (1973). It follows that when an Indian leaves the reservation to enter commerce with the rest of the state, he also leaves this preserve for tribal ways and customs. Tribal self-government no longer applies, not because he has stepped outside the reservation so much as because he has freely chosen not to preserve his tribal ways and customs, and in their place has submitted himself to state laws. It follows, then, that his submission to state law, once done, is not retracted by merely stepping back into the reservation. The consequences of such a submission are not so easily shed. Thus, the decision below does not interfere with tribal self-government.[7]

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6 **Mescalero Apache Tribe v. Jones,** 411 U. S. 145, 93 S. Ct. 1267, 1270, 36 L. Ed. 2d 114, 119, stating:

> "* * * Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the state."

7 Petitioners argue that tribal self-government is interfered with because, in their opinion, the respondent did not avail itself of available tribal or federal remedies. The court below correctly found that no such remedies exist. (See Petitioners' App. A, pp. 6a, 7a, 9a, 10a.) But more importantly, this argument of the petitioners does not address itself to the issue—does execution on reservation property to satisfy a valid state judgment interfere with tribal self-government. We argue that submission to state law by leaving the reservation subjects the Indian to state court remedies; therefore, issues of whether tribal remedies are available or not, are irrelevant.

III.

Inconsistency with other holdings does not necessitate granting the writ.

Respondent admits that the decisions cited on pages 14 and 15 of the petition are in conflict with the decision below. But these decisions, like the petitioners, argue that mesne processes of the state court require a second jurisdictional analysis under the *Williams* case, as if these processes constitute subject matter questions independent of the one considered at the outset of the suit. Their proposed second analysis is in error. To uphold it, is to in effect void the state judgment which the petitioners admit, and which this court acknowledges is valid.

CONCLUSION

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,

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Counsel for Respondent

January 1977.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-931

ROBERT STOPS AND NORMA STOPS,
Petitioners,

v.

LITTLE HORN STATE BANK

On Petition for a Writ of Certiorari to the Supreme Court of the State of Montana

---

REPLY MEMORANDUM OF PETITIONERS

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---

REPLY MEMORANDUM OF PETITIONERS

STATEMENT

Petitioners file this reply to the memorandum filed by the United States. Petitioners believe the record is sufficient for review and that the United States misapplies the jurisdictional principles involved.

DISCUSSION

1. First, the Crow Tribal Court of Offenses is a court established pursuant to federal laws and regulations promulgated thereunder. See 25 U.S.C. §§ 2 *et seq.*, 25 C.F.R. Chap. 11. Next, at the time of the execution

involved here and pursuant to Crow Tribal Resolution 64-2 (App. 1c), the Crow Tribal Court entertained actions brought by non-Indian creditors and continues to do so. Finally, if this Court concludes the record is not sufficient to determine if a remedy was available in tribal court, this matter should be remanded to the Montana Supreme Court for further proceedings on this issue.

2. However, this Court has indicated that the first judicial inquiry is whether Congress has excluded a state from the exercise of the disputed jurisdiction. *Kennerly* v. *District Court*, 400 U.S. 423 (1971), *McClanahan* v. *Arizona State Tax Commission*, 411 U.S. 164 (1973), *Moe* v. *Confederated Salish and Kootenai Tribes*, 425 U.S. 463 (1976). The first determination is whether Congress preempted jurisdiction over judgment executions on the Crow Reservation and not, as the government contends (Br. 3-4), whether such an exercise infringes or undermines the authority of the Crow Tribal Court.

Here Congress preempted the jurisdiction. At the time of the execution in this case, jurisdiction was controlled by the provisions of the Indian Civil Rights Act of 1968, Section 402(a), 82 Stat. 79, 25 U.S.C. § 1322(a) & (b). In addition to precluding state jurisdiction over "civil causes of action arising in Indian country", the Act requires that the Tribe specifically consent to the imposition of any state civil laws having general application over persons or private property. The Crow Tribe has not so consented.

Yet, exercise by the state of its general regulatory authority to execute is an exercise of that jurisdiction specifically prohibited by Congress. In light of this, there is no need to complicate the issue here with the issue of personal jurisdiction or by waiting for a case that raises both issues as the government suggests (Br. 5-6).

Montana case law on Indian-State jurisdiction is conflicting (Pet. 13). Even in face of continued direction from this Court (*Fisher* v. *District Court*, 424 U.S. 382), the Montana Supreme Court continues to erode the principles of Indian jurisdiction and it now is impossible to litigate these issues without additional clarification.

CONCLUSION

Therefore, for the reasons set forth in the petition and this reply memorandum, the petition for a writ of certiorari should be granted. In addition, petitioner would submit that on the basis of preemption, this Court can summarly reverse the judgment of the Montana Supreme Court without further argument.

Respectfully submitted,

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OCTOBER TERM, 1976

No. 76-931

ROBERT STOPS AND NORMA STOPS,
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v.

LITTLE HORN STATE BANK,
Respondent.

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE CROW TRIBE IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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ROBERT STOPS AND NORMA STOPS,
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v.

LITTLE HORN STATE BANK,
Respondent.

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The Crow Tribe of the Crow Reservation, Montana, respectfully moves this court for leave to file the accompanying brief, as *amicus curiae*, in support of the petition for writ of certiorari filed by Crow tribal members Robert and Norma Stops.

In support of this motion, your *amicus* states its interest in this case in the accompanying brief. The written consent of the petitioner to presenting this brief is filed simultaneously with it. The respondent has not acted on the request for its consent.

Your *amicus* believes that its views not only will assist the Court in its consideration of the pecition, but also represent the overriding interest of the Crow Tribe, the very government of which is intimately involved with this litigation.

Respectfully submitted,

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BRIEF *AMICUS CURIAE* OF THE CROW TRIBE IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

The Crow Tribe of the Crow Reservation, Montana, is a federally recognized Indian tribe, most of whose members reside upon the Crow Reservation and who are governed by the Tribal Council and the four elected officers of the Tribal Council and who are subject to the Court of Indian Offenses. The Crow Tribe is a self-governing tribe in every sense of that word.

The question in this case turns on whether the action of the state courts and county officers constitutes an infringement on self-government of the Crow Tribe. Because the Crow Tribe's own government has such a serious stake in the outcome of this case, it is fair to say that the Tribe has an interest as great, if not

greater, than petitioners in seeing the decision of the Supreme Court of Montana reversed.

REASONS FOR GRANTING THE WRIT

The Montana Supreme Court here has sanctioned execution of a state court judgment by state officials on the property and wages of Crow tribal members, all within the exterior boundaries of the Crow Indian Reservation. That court bases its decision on application of the test announced by this Court in *Williams* v. *Lee*, 358 U.S. 217, 220 (1959), by finding and concluding that the state action did not infringe on the right of the Crow Indians to make their own laws and be ruled by them. The lower court relied on the fact that many of the transactions leading to the initial judgment occurred off the Reservation. The "crucial fact" was that "the subject matter jurisdiction lies with the state court, not the tribal court." (Mont. 1976) (Appendix to Petition (App. 7a)). The lower court was so concerned with its perceived central issue of the "enforcement of a valid judgment," (App. 6a), that it summarily assumed without the required inquiry that the Crow Tribe has provided no means of enforcing such judgments and has not acted in a governmental manner in this enforcement area. (App. 7a). On this assumption, the court then concluded that self-government of the Crow Tribe is not interfered with by executions on the Reservation of state court judgments for off-Reservation debts. *Id.*

At a later point in its opinion, the Montana Supreme Court, without any reference to written authority to the contrary, states that "[t]he tribal court lacked subject-matter jurisdiction." (App. 9a).

Your *amicus* contends that in the first instance the lower court did not use the proper test and in the second instance, assuming *arguendo* the proper test was used,

the court misapplied the test by reference to unfounded and erroneous assumptions.

The question posed in *Williams* v. *Lee*, *supra* at 220, concerning the infringement on tribal self-government, is not the proper inquiry here. The proposition stated in *Williams* v. *Lee* is that

> ". . . Essentially, absent governing Act of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them." *Id.*

In *Kennerly* v. *District Court*, 400 U.S. 423 (1971), a case holding that a debt incurred by an Indian on his reservation was not subject to state court jurisdiction, this Court focused on the first portion of the *Williams* v. *Lee* proposition, namely, whether there was a governing Act of Congress. It found that the Act of August 15, 1953, 67 Stat. 589, partially codified at 18 U.S.C. § 1162 and 28 U.S.C. § 1360, as amended, 25 U.S.C. § 322, which established certain conditions by which Montana might have assumed jurisdiction over the Crow Reservation, was such a governing Act of Congress. Because that statute, commonly called Public Law 280, sets the conditions for assertion of any state jurisdiction over Indians on a reservation, the remainder of the *Williams* v. *Lee* test is not applicable in this instance.

It is not disputed, as the petition indicates, page 6, that Montana has not met the statutory conditions for assumption of jurisdiction with respect to the Crow Reservation.[1]

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[1] 25 U.S.C. § 322(a) amended the original provisions of Public Law 280 to establish a new precondition before any state could attempt to exercise jurisdiction over an Indian reservation by requiring the tribe involved to give its consent in a special election held among tribal members. It has been held both before and after this amendment that Montana has no jurisdiction with respect to the Crow Tribe. *Kennerly* v. *District Court*, *supra*, and *Crow Tribe* v. *Deernose*, 487 P.2d 1133, 1135 (Mont. 1971).

In discussing *Kennerly*, the lower court here read the decision as overruling the *Williams* v. *Lee* test, but then construed a revival of the *Williams* test in *McClanahan* v. *Arizona State Tax Comm'n*, 411 U.S. 164, 179 (1973), and *Fisher* v. *District Court*, 424 U.S. 382, 386 (1976). (App. 5a). Your *amicus* does not read *Kennerly* as overruling *Williams*, but simply interprets *Kennerly* as focusing on the governing act of Congress clause in the *Williams* test. Finding such an act, this Court necessarily held that the state must meet the conditions of the act in that case, and in this one Public Law 280, before exercising any jurisdiction over reservation Indian matters.

The Court in *McClanahan* indicated the *Williams* test dealt principally with situations involving non-Indians. 411 U.S. at 179. The Court in *Fisher* found that in a situation with only Indians involved "at least the same standard [showing no infringement with tribal self-government] must be met before the state courts may exercise jurisdiction." 424 U.S. at 386. Neither *McClanahan* nor *Fisher* should be read to support the proposition that determinations of infringement negate the need to determine first if the statutory conditions in Public Law 280 empowering a state to assume jurisdiction have been met. It simply is not possible for the Montana Supreme Court to find the proper exercise of state jurisdiction here absent compliance by Montana with Public Law 280, whether there is infringement with Crow tribal self-government or not, and it was so held by a lower federal court in a virtually identical factual situation. *Annis* v. *Dewey County Bank*, 335 F. Supp. 133 (D. S.D. 1971). *See also Arizona Ex rel. Merrill* v. *Turtle*, 413 F.2d 683 (9th Cir. 1969).

Assuming *arguendo* that here the Court must determine whether Crow tribal self-government has been infringed, under the facts of the instant case, it is clear there is infringement. Contrary to the assumptions made

by the Montana Supreme Court, the Crow tribal court is very much involved here. It is established as a Court of Indian offenses, pursuant to 25 C.F.R. Pt. 11. These provisions govern, with whatever partial modification may be provided by the governing body of a particular tribe, the tribal courts of all tribes which have not established their independently constituted judicial system. The Crow Tribe has made modifications to many of the provisions in 25 C.F.R. Pt. 11.[2] The Tribe has adopted its own language to establish the civil jurisdiction of its court, 25 C.F.R. § 11.22C, and a provision with respect to judgments in civil actions, 25 C.F.R. § 11.24C. The jurisdiction of the Crow tribal court extends to "suits between members and nonmembers which are brought before the courts by stipulation of both parties." 25 C.F.R. § 11.24C. Insofar as the record shows, the respondent here, as plaintiff in the state court, made no attempt to sue petitioners in the tribal court pursuant to this provision. Had that suit been properly brought, as it might have been, this entire issue could have been avoided. Furthermore, judgments of the tribal court may consist of awarding money damages and they may direct the surrender of property or the performance of some other act to benefit the injured party. 25 C.F.R. § 11.24C. Other provisions in the code of federal regulation, specifically adopted by the Crow Tribe and approved by the Secretary of the Interior, authorize under appropriate conditions the Secretary to direct payment of delinquent judgments against tribal members from their Indian trust money accounts. 25 C.F.R. § 11.26C.

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[2] There are approximately 100 separate sections in Part 11 of Title 25, Code of Federal Regulations. Of this number, the Crow Tribe has adopted and the Secretary of the Interior has approved some sixteen different sections specifically applicable to the tribe that control over general language in related sections promulgated by the Secretary. See note following contents in 25 C.F.R. Subchapter B, Part 11.

In short, respondent never attempted to avail itself of the opportunity to sue petitioners in tribal court and obtain satisfaction on its claim through that court system.

Even after respondent obtained a state court judgment, no effort was made to execute that judgment through the auspices of the tribal court. Provisions in the governing regulations do not specify whether the tribal court shall give full faith and credit to a state court judgment, but here the tribal court never had the opportunity to pass on that question and interpret whether or not it considered itself bound by such a consideration or whether it would willingly recognize at least a comity with respect to the state court judgment.

Tribal court process was available and yet was avoided. It is clear that under these circumstances even the *Williams* v. *Lee* test is met and that the tribal self-government procedures of the Crow Tribe are interfered with by the execution of judgment of the state court.

CONCLUSION

For the reasons stated, your *amicus* respectfully prays that the petition for writ of certiorari be granted, or, in the alternative, that the decision below be summarily reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-931

ROBERT STOPS AND NORMA STOPS,
Petitioners,

vs.

LITTLE HORN STATE BANK,
Respondent.

[redacted] BRIEF
AMICUS CURIAE

The State of Montana, by and through its Attorney General, respectfully moves this Court for leave to file the accompanying brief as **amicus curiae** in opposition to the petition for writ of certiorari filed herein by Robert Stops and Norma Stops.

In support of this motion your **amicus** states that the questions of law as set forth in the accompanying brief have not been adequately presented by the briefs heretofore filed in this matter and that disposition of this matter without consideration of those questions may severely limit the enforceability of the valid judgments of the courts of the State of Montana.

DATED: March, 1977.

Respectfully submitted,

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Respondent.

BRIEF AMICUS CURIAE OF THE STATE OF MONTANA IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

ARGUMENT

The Decision Below

The decision by the court below, *Little Horn State Bank v. Stops,* 555 P. 2d 211 (Mont. 1976) evidences the difficulty which has been encountered by the Montana Court in the application of the jurisdictional tests announced by this Court. The Montana Court determined that the often-quoted test of *Williams v. Lee,* 358 U. S. 217, 200 (1959):

> Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of the reservation Indians to make their own laws and be ruled by them.

was "apparently overruled" by *Kennerly v. District Court,* 400 U. S. 423 (1971). The court concluded, however, that *McClanahan v. Arizona Tax Commission,* 411 U. S. 164 (1973) and *Fisher v. District Court,* 424 U. S. 382 (1976) had revived the *Williams* test, and that it was thus "appropriate to review this appeal" (555 P. 2d at 213).

The court applied the *Williams* infringement test and concluded that the state action, the writ of execution on the off-reservation state court judgment, did not interfere with the tribe's right to make its own rules and be governed by them (555 P. 2d at 213). The court emphasized that the state district court's subject matter jurisdiction or personal jurisdiction had not been attacked (555 P. 2d at 212), and that the issue was the "enforcement of a valid judgment, *not the proper court to initiate the litigation.*" (Emphasis added, 555 P. 2d at 213.)

The Williams Decision and Subsequent Decisions by This Court

In *Williams v. Lee,* 358 U. S. 217 (1959), a non-Indian merchant operating on the Navajo Reservation sued an Indian in Arizona state court to collect a debt incurred on the reservation. This Court rejected the state court's jurisdiction to entertain the action and laid down the test which has been subsequently applied:

> Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.

The Court found as a fact that allowing the state court to exercise jurisdiction over this debt action would undermine the tribal courts and infringe upon the right of the Indians to govern themselves (358 U. S. at 222-23). While the Court was most concerned with the infringement question it did note a "general statute" in which Congress had provided a means for states to "assume jurisdiction over reservation Indians" (Public Law 280, 67 Stat. 588). Arizona, the Court noted, had not acted thereunder to accept the jurisdiction granted (358 U. S. at 222-23).

Since *Williams,* state courts have often seized upon the infringement test quoted above, and have determined questions of state jurisdiction involving Indians primarily upon that basis. *See, e. g., Natewa v. Natewa,* 499 P. 2d 691 (N. Mex. 1972). Whatever confusion existed was a result of *Williams'* failure to fully explain what the Court considered to be a "governing Act of Congress," the application which would preclude invocation of the infringement test.

This situation was apparently laid to rest in *Kennerly v. District Court,* 400 U. S. 423 (1971), which, like *Williams,* involved a debt action in Montana State court by a non-Indian against an Indian defendant on a debt incurred within the reservation. In order to meet the *Williams* infringement test, the state relied upon a tribal council resolution attempting to give the state courts concurrent jurisdiction with the tribal courts over civil actions arising on the reservation (400 U. S. at 425). This Court found, however, that the *Williams* test was inapplicable since, by its terms, there was a governing act of Congress which precluded its application (400 U. S. at 427). This governing act of Congress was Public Law 280, *supra.*

Public Law 280 was enacted in 1953 to directly confer criminal jurisdiction over offenses committed by or against Indians in certain areas of Indian country in specified states. 18 U. S. C. § 1162. It likewise directly conferred upon certain specified states "jurisdiction over civil causes of action between Indians or to which Indians are parties." 28 U. S. C. § 1360. Netiher of these direct grants of jurisdiction was applicable to the State of Montana. Sections 6 and 7 of the Act, however, provided (67 Stat. 590):

> Sec. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: Provided, that the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.
>
> Sec. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.

These two sections allowed the "optional states" not directly granted jurisdiction to assume civil and criminal jurisdiction in accordance with the preceeding sections of the Act by amending their constitutions and statutes to remove impediments to jurisdiction where necessary, or

by affirmative legislative action. Thus, the states were unilaterally allowed to extend civil and criminal jurisdiction over causes of action or offenses involving Indians arising or committed in Indian country.

Public Law 280 was amended by Title IV of the Civil Rights Act of 1968 (P. L. 90-284, 82 Stat. 79; 25 U. S. C. § 1321-1326). The amendments repealed Section 7 of the Act, but not any jurisdiction acquired thereunder prior to that time (25 U. S. C. § 1323). As to civil jurisdiction, the amendments allow states, with consent of the affected tribe evidenced by majority vote of the adult members voting at a special election, to assume jurisdiction over "civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country" within the state (25 U. S. C. § 1322). These amendments were enacted in response to tribal criticism over the unilateral nature of the prior law. *See,* 1968 U. S. Code Cong. and Admin. News 1837, 1865-66.

These enactments, the *Kennerly* Court held, were "governing Acts of Congress" under *Williams* (hereafter, both the original Act, and the 1968 amendments will be referred to as Public Law 280). The dispute in *Kennerly* thus resolved itself to a determination of whether Montana had acted under either Public Law 280 to assume jurisdiction over the debt action in question. The Court strictly construed the statutory procedures and found no jurisdiction (400 U. S. at 425, 429).

While the court below in the instant case construed *Kennerly* as overruling the *Williams* infringement test (555 P. 2d at 213), that was clearly not done. Rather, the *Kennerly* Court applied the *Williams* test but simply con-

strued Public Law 280 as a governing Act of Congress. The "infringement" portion of the test was not ignored or overruled, it was simply inapplicable because of the triggering effect of the Congressional enactments (400 U. S. at 426-27).

Further refinements to *Williams* and *Kennerly* were forthcoming in *McClanahan v. Arizona Tax Commission,* 411 U. S. 164 (1973) wherein this Court struck down Arizona's application of its income tax as applied to an Indian whose income was earned solely from reservation sources. The Court held that the *Williams* non-infringement test applies "principally" to situations involving non-Indians, and, in those situations in which the tribe and the state could fairly claim an interest, allows the State to protect its interests to the point of affecting tribal self-government (411 U. S. at 179). In cases involving Indians, however, such as *Williams, Kennerly* and *McClanahan,* the governing acts of Congress "may not be ignored simply because tribal self-government has not been infringed." (411 U. S. at 180). Thus, far from being a revival of *Williams* as found by the court below in the instant case (555 P. 2d at 213), the *Williams* test, while it was never dead, clearly now applies to situations involving non-Indians.

These clear lines were somewhat blurred last year by *Fisher v. District Court,* 424 U. S. 382 (1976) which involved the issue of whether the Montana courts had jurisdiction over an adoption in which all parties were reservation Indians. While the *Fisher* opinion correctly states that the *Williams* infringement test applies to litigation between Indians and non-Indians it held that an all-Indian

proceeding must at least meet that standard. The Court then went on to analyze the case in terms of infringement, and devoted only one sentence to a statement that the state had not acted under Public Law 280 to acquire the applicable jurisdiction.

Thus while *Fisher* did point out the limitations on the *Williams* infringement test, and did note that Public Law 280 had not been complied with, the opinion *in toto* is so close to *Williams* that it is no wonder that state courts eager to protect their jurisdiction have seized upon it to find an expansion of *Williams. See* 555 P. 2d at 213. This *amicus* does not construe *Fisher* as being intended as a retreat from *Kennerly* and *McClanahan,* and this Court is urged to clarify this point.

Public Law 280 Does Not Apply to the Instant Case

It is the central argument of this *amicus* that Public Law 280 does not apply to the issue raised by the petitioner herein. Rather, since Public Law 280 is inapplicable, the *Williams* infringement test must be used to determine whether execution of the judgment on the reservation was proper. A focus upon the statutes was recently confirmed by *McClanahan v. Arizona Tax Commission,* supra, wherein this Court noted that the trend in resolving jurisdictional disputes has been away from the idea of inherent Indian sovereignty as a bar to state action, and toward a reliance on federal preemption (411 U. S. at 172). This approach avoids "platonic notions of Indian sovereignty" and relies instead upon applicable treaties and statutes to define the limits of state power (*Id.*).

A focus upon Public Law 280 (25 U. S. C. §§ 1321-1326) supports the argument that there is nothing therein to preclude the execution of judgment attempted in the instant case. As it applies to civil jurisdiction, Congress has provided (25 U. S. C. § 1322(a)):

> (a) The consent of the United States is hereby given to any State not having jurisdiction over *civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country* situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State. (Emphasis added.)

The plain language of this provision indicates that it is designed to provide a means for states to *acquire* jurisdiction over civil causes of action to which Indians are parties and which *arise* in Indian country (*See* 18 U. S. C. § 1151). Thus, § 1322 (a) applies to the *initial* acquisition of state jurisdiction, and does not govern situations such as the present one in which state jurisdiction has validly attached based upon a transaction which *did not arise* on the reservation. Therefore, under *Williams,* the infringement test would be used, as was done by the court below, to determine the validity of the execution of judgment in the instant case.

This construction of § 1322 (a) finds support in this Court's recent decision in *Bryan v. Itasca County,* 96 S. Ct. 2102; 44 U. S. L. W. 4832 (1976). The *Bryan* opinion was concerned with Minnesota's imposition of personal property tax on a mobile home owned by a reservation Indian, and the majority of the opinion was devoted to an analysis of Public Law 280 jurisdiction. The Court found that the legislative history of Public Law 280 civil jurisdiction provisions was sparse, but concluded:

> Piecing together as best we can the sparse legislative history of § 4, subsection (a) seems to have been primarily intended to redress the lack of adequate Indian forums for resolving private legal disputes between reservation Indians, and between Indians and other private citizens, by permitting the courts of the States to decide such disputes; this is definitely the import of the statutory wording conferring upon a State "jurisdiction over civil cause of action between Indians or to which Indians are parties which arise in . . . Indian country . . . to the same extent that such State . . . has jurisdiction over other causes of action." With this as the primary focus of § 4 (a), the wording that follows in § 4 (a)—"and those civil laws of such State . . . that are of general application to private persons or private property shall have the same force and effect within Indian country as they have elsewhere within the State"—authorizes application by the state courts of their rules of decision to decide such disputes. Cf. 28 U. S. C. § 1652. This construction finds support in the consistent and uncontradicted references in the legislative history to "permitting" "*State courts to adjudicate* civil controversies" arising on Indian reservations, H. R. Rep. No. 848, at 5, 6 (emphasis added), and the absence of anything remotely resembling an intention to confer general state civil regulatory control over Indian reservations. *In short, the consistent and exclusive use of the terms*

> *"civil causes of action," aris[ing] in, "civil laws of general application to private persons and private property," and "adjudicat[ion]," in both the Act and its legislative history virtually compels our conclusion that the primary intent of § 4 was to grant jurisdiction over private civil litigation involving reservation Indians in state court.* [Footnotes omitted, emphasis added].

While the Court used this language to support its argument that Public Law 280 conferred jurisdiction over civil causes of action but did not confer taxing authority, it clearly also supports the argument made above. That is, the statute is directed toward the acquisition of state civil jurisdiction and has no application to a situation in which jurisdiction has already validly attached independently of Public Law 280.

In the instant case the state court had valid jurisdiction over the cause of action which arose from an off-reservation transaction. This jurisdiction was not attacked below (555 P. 2d at 212), and is not raised as an issue before this Court (Petitioner's Brief, p. 2). The validity of this jurisdiction follows the general rule that:

> an Indian who is "off the reservation" is subject to the laws of the State or Territory in which he finds himself, to the same extent that a non-Indian citizen or alien would be subject to those laws.

Cohen, U. S. D. I. Federal Indian Law, 510-11 (1958). The jurisdiction of states over off-reservation activities was bolstered by this Court's opinion in *Mescalero Apache Tribe v. Jones,* 411 U. S. 145 (1973). Although *Mescalero* dealt with the "special area of state taxation" in which state jurisdiction is very circumscribed (*Bryan v. Itasca County,*

supra), the Court noted that broad assertions of exclusive federal jurisdiction have become "particularly trecherous." (411 U. S. at 148). At 411 U. S. 148-49, this Court held:

> Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State.

The conclusion of *Mescalero* was that the state possessed jurisdiction to tax the receipts of a ski resort that the tribe had chosen to operate off the reservation. The petitioners in the instant case would have this Court hold that individual Indians who likewise choose to conduct their business off the reservation can escape the resulting obligations by retreating to the reservation. This argument is unwarranted in light of *Mescalero* since the entity being taxed there on its off-reservation activities—the tribe itself—was certainly located within the reservation. If the state in *Mescalero* could not collect the tax because the tribe resided within the reservation, or if the instant judgment could not be executed within the reservation, then both the power to tax and the jurisdiction to enter judgment would be nullified.

The implication of *Mescalero,* and the argument urged upon this Court by your amicus, is that an Indian choosing to transact business off the reservation thereby submits himself to the state law and resulting remedies that arise from and apply to that transaction.

It has been a long standing doctrine that any court having jurisdiction to render a judgment also has the power to enforce that judgment into effect. *U. S. ex rel. Riggs v. Johnson County,* 6 Wall. 166, 18 L. Ed. 768 (1868);

Pam-to-Pee v. United States, 187 U. S. 371, 23 S. Ct. 142, 47 L. Ed. 221 (1902); *Hamilton v. Nakai,* 453 F. 2d 152, cert. den. 406 U. S. 945, 92 S. Ct. 2044, 32 L. Ed. 2d 332.

This Court defined "jurisdiction" 6 Wall. 166, 18 L. Ed. at p. 773 in *Riggs*:

> Jurisdiction is defined to be the power to hear and determine the subject matter in controversy in the suit before the court, and *the rule is universal, that if the power is conferred to render the judgment or enter the decree. it also includes the power to issue proper process to enforce such judgment or decree.*
>
> Express determination of this court is that the jurisdiction of a court is not exhausted by the rendition of the judgment, but continues until that judgment shall be satisfied. [Emphasis added.]

The Montana legislature enacted section 93-1106, R. C. M. 1947, which contains language analogous to this principle. That section has been interpreted to confer upon a court having proper jurisdiction, all the means necessary to carry the same into effect, and if the court has the power to make an order, it has jurisdiction to enforce that order. *State ex rel. Eisenhauer v. District Court,* 54 Mont. 172, 168 P. 522.

The district court below initially sought to enforce its judgment by a writ of execution pursuant to section 93-5801 et seq., R. C. M. 1947. A writ of execution against property of a judgment debtor may be issued by the district court to the sheriff of any county in the state. Section 93-5809, R. C. M. 1947. Thus, a district court has statewide enforcement power under that section. However, the writ must issue to the proper sheriff, since a sheriff has no authority to serve the writ outside of his

county. *Merchants Credit Service v. Chouteau Co. Bank,* 112 Mont. 229, 114 P. 2d 1074.

Absent the existence of the Crow Indian Reservation, there is no question that this writ of execution would be a valid means of enforcing the judgment of the district court. The property subject to the writ was located within Big Horn County, the writ was directed to the sheriff of Big Horn County, and all other essential elements of a valid writ of execution existed. This was in all respects, therefore, a "non-discriminatory state law otherwise applicable to all citizens of the State." (*Mescalero,* 411 U. S. at 148-49).

Allowing Enforcement of the Instant Judgment on the Reservation Would Not Violate the Williams Infringement Test

The court below found (555 P. 2d at 213) that the respondent Bank's execution of judgment by attaching petitioner's wages earned on the reservation would not infringe upon the right of the Crow Indians to make their own laws and be ruled by them. (*Williams, supra,* 358 U. S. at 220). This conclusion is patently correct and the action below, brought by a non-Indian to collect an off-reservation debt, is a classic situation calling for the application of *Williams.* In fact, a significant and adverse infringement on the lives of individual Indian citizens will result from adoption of petitioner's arguments since off-reservation credit sources will likely dry up as a result of the inability to enforce the commercial obligations on the reservation.

The cases finding interference under *Williams* have involved on-reservation transactions and tribal courts

providing jurisdiction over the disputes involved. *See, e. g., Williams* and *Fisher, supra.* In this case, however, it must be reiterated that the issue is *not* the proper court to initiate the litigation, but the enforcement of a valid judgment.

The petitioner's brief herein does not make any real showing that enforcement of the instant judgment would infringe upon Indian self-government in any way. The only arguments made consist of recitations concerning the general nature of courts of Indian offenses (citing 25 C. F. R. Pt. 11), and implications that the Crow Tribe maintains a judicial system capable of enforcing the judgment herein (Pet. Br. pp. 9-13). However, neither the federal regulations cited above nor the Crow Law and Order Code provide any means for on-reservation enforcement of a state court judgment, and no method of attaching property of a state judgment debtor. The most that the regulations provide is for enforcement of *tribal court* judgments against an Indian defendant from funds held "to his credit at the agency office" (25 C. F. R. § 11.26(c)). Moreover, the civil jurisdiction of the Tribal Court attaches only upon stipulation of both parties (25 C. F. R. § 11.22). It would indeed be an idle act to require the respondent Bank to attempt to invoke Tribal Court jurisdiction over the petitioners and await their decision as to whether they consented to be sued. The petitioners here must be required to show a real remedy and some real interference with tribal self-government. *Utah & Northern R. v. Fisher,* 116 U. S. 28 (1885).

The only contacts with the Tribal Government in the instant transaction are remote at best. The attachment

sought by respondent Bank was against petitioner's wages, which were not paid by or derived from the Tribe. This is not a situation in which execution has been attempted against restricted trust property (*See Jordan v. O'Brien,* 18 N. W. 2d 30 (S. D. 1945)), and no power to do so is argued here.

Conflicts Among the Courts Below

The various lower courts, state and federal, which have considered issues similar to the present one have reached differing conclusions. The only case directly on point cited in petitioners' brief (Pet. Br. p. 14) is *Annis v. Dewey County Bank,* 335 F. Supp. 133 (D. S. D. 1971). In *Annis* the non-Indian creditor obtained a state court judgment against the Indian debtor on promissory notes secured by collateral located on the reservation. The court concluded that the county sheriff could not attach the Indian debtor's property located on the reservation in order to satisfy the judgment (335 F. Supp. at 135-36), since state officials have no jurisdiction to enforce a state judgment on a reservation. Two cases were cited in support of this conclusion. In *Commissioner v. Brun,* 174 N. W. 2d 120 (Minn. 1970), the issue was whether the state could collect an income tax from reservation Indians. While this ultimate holding was correct in light of *McClanahan, supra,* the court also stated, that the state lacked jurisdiction to enforce a judgment against a reservation Indian. This bare statement offers little support for that conclusion. Further, the action involved the Red Lake Reservation in Minnesota which was the only reservation in that state expressly excepted from the direct grant of civil jurisdiction in 28 U. S. C. § 1360. This res-

ervation, the Minnesota court has acknowledged, "enjoys a peculiar status among Indian reservations in this and other states." *County of Beltrami v. County of Hennepin,* 119 N. W. 2d 25, 30 (Minn. 1963). Thus holdings involving the Red Lake Reservation should be accorded little weight as applied to other factual settings.

The other case relied upon by *Annis* was *Jordan v. O'Brien,* 18 N. W. 2d 30 (S. D. 1945), which involved the validity of attachment of reservation real property still under federal trusteeship. It is undisputed that trust property is not subject to state execution, and no such question is presented in the instant case.

The other cases cited at pp. 14-15 of petitioners' brief are not apposite to the present issue. *Arizona ex rel. Merrill v. Turtle,* 413 F. 2d 683 (9 Cir. 1969) involved the state's power of extradition, and not enforcement of a civil judgment. It is interesting that petitioners have relied upon *Turtle,* however, since the court's conclusion that the state lacked extradition jurisdiction within the Navajo Reservation was based wholly upon an analysis under the *Williams* infringement test and not upon whether the state had acted to assume any jurisdiction under Public Law 280. Applying the infringement test, the court found that the relevant treaty had given the Navajo Tribe apparently exclusive jurisdiction over inter-sovereign rendition (413 F. 2d at 686). *Francisco v. State,* 556 P. 2d 1 (Ariz. 1976) involved the service of process necessary to acquire jurisdiction initially, and did not deal with on-reservation enforcement of a valid state court judgment.

In support of the respondent's position herein is *Natewa v. Natewa,* 499 P. 2d 691 (N. M. 1972). In *Natewa*

the non-Indian mother sued in Wisconsin and obtained an order for child support against her Indian husband who was a resident upon the Zuni Reservation in New Mexico. The New Mexico prosecutor, pursuant to the Wisconsin judgment, obtained from the local court an order requiring the support payments. The New Mexico Supreme Court rejected the husband's challenge to jurisdiction, holding (499 P. 2d at 693):

> The totality of the marriage relationship shows significant contacts with jusisdictions other than the Zuni Reservation. Appellant cannot interpose his special status as an Indian as a shield to protect him from obligations that result from his marriage to appellee which had been entered into off the reservation.

Since the Wisconsin court obtained proper subject matter jurisdiction over the action, which arose from the marital and not any tribal relationship, the judgment was upheld (*Id.*). Thus, the court was persuaded by the same factors that are present in the instant case: proper subject matter jurisdiction by the state court arising from an off-reservation transaction, and an obligation which arose from personal transactions rather than any status as an Indian. *Cf. State Securities, Inc. v. Anderson,* 506 P. 2d 786 (N. M. 1973). We urge this Court to adopt this reasoning.

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CONCLUSION

Your *amicus* respectfully urges that this Court deny the petition for writ of certorari. The present case confronts the Court with a legitimate and vital state interest

in the enforcement of the valid judgments of its courts. The situation *in toto* is one occurring off the reservation and no real questions of intrusion of state civil jurisdiction into the reservation and tribal affairs is presented. State jurisdiction has been recognized in similar situations, and it must also be recognized here. If Montana's Indian citizens are to be guaranteed the continuation of off-reservation sources of credit, state courts must be able to enforce judgments resulting from off-reservation transactions.

Respectfully submitted,

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No. 76-931

In the Supreme Court of the United States

OCTOBER TERM, 1976

ROBERT STOPS AND NORMA STOPS, PETITIONERS

v.

LITTLE HORN STATE BANK

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MONTANA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

WADE H. MCCREE JR.,
Solicitor General,
Department of Justice,
Washington D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted in response to this Court's order of February 28, 1977, requesting the views of the United States. It is the position of the United States that although the extent of state court jurisdiction over Indians and their property located within an Indian reservation is an issue of continuing importance, this case does not provide a suitable vehicle for plenary review.

STATEMENT

Petitioners are enrolled members of the Crow Indian Tribe residing on the Crow Reservation. On July 15, 1970, they entered into a loan agreement with the Little Horn State Bank in Hardin, Montana, which is located outside the exterior boundaries of the Crow Reservation. The Stops defaulted on the loan and the bank repossessed

certain farm machinery and filed an action in the state district court on the note.

Petitioners were served with process at their home on the Crow Reservation. They filed a motion to dismiss for want of personal jurisdiction, which was denied, but did not question the subject matter jurisdiction of the state court. The court then entered judgment against petitioners in the amount of $3,541.24.

Following judgment, the court issued, on February 23, 1976, a writ of execution directed to the Sheriff of Big Horn County, who proceeded to garnish wages of the petitioners earned on the Reservation.[1] Petitioners sought and obtained injunctive relief against the writ of execution in the state district court.

On appeal, the Supreme Court of Montana reversed. The court reasoned that by acquiring subject matter jurisdiction to hear the original litigation, the state court also acquired jurisdiction to ensure satisfaction of the

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[1]The writ of execution giving rise to this litigation was directed at petitioners' wages earned on the Reservation as employees of the National Park Service and the U.S. Public Health Service (Pet. App. 2b). The employers were not joined as parties and petitioners did not raise the employers' immunity from garnishment as agencies of the United States. The United States has not consented to writs of garnishment against the wages of its employees for debts arising from commercial loan transactions. See *Buchanan* v. *Alexander*, 4 How. (45 U.S.) 20; S. Rep. No. 93-1356, 93d Cong., 2d Sess. 53 (1974).

The order of the Montana district court, however, enjoined the bank "from levying execution on the judgment entered herein upon the property of the defendants and their wages within the Crow Indian Reservation" (Pet. App. 1b). After the judgment of the Supreme Court of Montana dissolving this injunction, and prior to the filing of the present petition, the respondent bank executed on three motor vehicles owned by petitioners. The parties have agreed upon a stay of execution for the remaining balance of the judgment ($1,300); that amount is posted in the state district court.

judgment entered therein. Applying the test of *Williams* v. *Lee*, 358 U.S. 217, the court found no interference with the right of the Crow Tribe to govern itself (Pet. App. 6a-7a):

> The Crow Tribe provides no means of enforcing state court judgments, no method of attaching property of a state judgment debtor, and is not subject to the full faith and credit clause as sister states are. Until the Crow Tribe has provided a means of such enforcement or acted in some manner within this area, we fail to see how tribal self-government is interfered with by assuring that reservation Indians pay for their debts incurred off the reservation.

The court therefore dissolved the injunction.

DISCUSSION

1. While we believe that the Montana Supreme Court may have erroneously concluded that execution on the state court judgment within an Indian reservation would not undermine the authority of the Crow tribal court, in light of the uncertain record and narrowness of the issue in this case we do not recommend further review.

Although state courts generally may exercise jurisdiction over persons, property, and events occurring within the boundaries of the State, that principle has been significantly modified in the context of Indian reservations. When "civil causes of action between Indians or to which Indians are parties * * * arise in the areas of Indian country situated within such State," state court jurisdiction may be exercised only in accordance with the provisions of the Civil Rights Act of 1968, Section 402(a), 82 Stat. 79, 25 U.S.C. 1322(a), which require affirmative assumption of jurisdiction by the State and the approval of a majority of the affected tribal members. *Fisher* v. *District Court*, 424 U.S. 382. This

limitation applies even when one party to the lawsuit is a non-Indian. *Kennerly* v. *District Court*, 400 U.S. 423. While state courts have somewhat greater latitude over causes of action arising outside of Indian country, we believe that any related exercise of jurisdiction over Indians within the boundaries of their reservation must be circumscribed so that it does not "undermine the authority of the tribal courts over Reservation affairs and hence * * * infringe on the right of the Indians to govern themselves." *Williams* v. *Lee*, *supra*, 358 U.S. at 223.

In our view, the enforcement of state court judgments against Indians residing within an Indian reservation, without recourse to established tribal courts, directly "undermine[s] the authority of the tribal courts over Reservation affairs." The Montana Supreme Court declined to reach that conclusion in this case, however, stating that "[t]he Crow Tribe provides no means of enforcing state court judgments, no method of attaching property of a state judgment debtor, and is not subject to the full faith and credit clause as sister states are" (Pet. App. 6a-7a). This statement apparently was based on the court's belief that "in the situation at hand the Crow Tribal Court only exercises jurisdiction over civil litigation between members and non-members if both parties so stipulate" (*id.* at 6a). This statement is disputed by petitioners (Pet. 11-12) and by the Tribe as *amicus curiae* (Br. 6-8).

The question whether direct execution on the Reservation in this case would undermine tribal court authority, therefore, depends in large part upon whether recourse to the Crow tribal court would necessarily have been unavailing. Although the positions urged by petitioners and by the Tribe seem reasonable, the record does not enable one to conclude with assurance that the Montana Supreme Court erred in finding that no remedy in the tribal court was

available. We do not believe that plenary review of this question is warranted.[2]

2. Moreover, although this case raises a question of general importance regarding the right of reservation Indians to be free of state judicial control, it comes to the Court in an especially narrow posture. While petitioners contested service of process upon them within the Reservation, moving to dismiss the complaint for want of personal jurisdiction, they did not challenge the denial of their motion on appeal. Therefore, the sole question presented to this Court is whether a state court, having assumed jurisdiction over reservation Indians and rendered a valid judgment, may subsequently permit satisfaction of that judgment by execution on property located within an Indian reservation.

The question whether state court process may be served within a reservation to assert personal jurisdiction over a tribal member has been litigated with conflicting results in several state court actions arising from transactions or events occurring outside the boundaries of reservations. Compare *Franciso* v. *Arizona*, 556 P. 2d 1 (Ariz.), with *Bad Horse* v. *Bad Horse*, 163 Mont. 445, 517 P. 2d 893, certiorari denied, 419 U.S. 847; *State Securities, Inc.* v. *Anderson*, 84 N.M. 629, 506 P. 2d 786. See also *Benally* v. *Marcum*, 89 N.M. 463, 553 P. 2d 1270. In our view, the effectiveness of personal service upon an Indian on his reservation raises issues similar to, and closely connected with, the legitimacy of execution on that Indian's property and wages within a reservation. Thus, the Court may wish to defer consideration of these issues and thereby allow further

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[2]We note that a federal district court prohibited enforcement of a state court judgment upon a reservation. *Annis* v. *Dewey County Bank*, 335 F. Supp. 133 (D. S.D.).

development of the governing principles in the state and federal courts.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

APRIL 1977.

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